

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**MERCEDES TERRELL, *et al.*,**

***Plaintiffs,***

**v.**

**CHICAS ENTERTAINMENT, LLC  
d/b/a CHICAS CABARET,**

***Defendant.***

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**CIVIL ACTION NO. 4:21-cv-00277**

**DEFENDANT’S ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

Defendant Chicas Entertainment, LLC, d/b/a Chicas Cabaret, submits its Answer to the First Amended Complaint (“FAC”) (Doc. No. 14) filed by Plaintiffs, Mercedes Terrell, Jessica Golden, Sara Underwood, Jessica Burciaga, Irina Vornina, Brooke Marrin, a/k/a Brooke Banx, and Rosa Acosta.

**RESPONSE TO BACKGROUND**

1. Defendant denies the allegations in paragraph 1.
2. Defendant denies the allegations in paragraph 2.
3. Defendant denies that Plaintiffs are entitled to any of the relief specified in paragraph 3.

**RESPONSE TO JURISDICTION & VENUE**

4. Defendant admits that this Court has subject matter jurisdiction. Defendant denies the remainder of paragraph 4.

5. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5.

6. Defendant admits the allegations in paragraph 6.

7. Defendant admits that venue is proper in this Court.

8. Defendant admits the allegations in paragraph 8.

### **RESPONSE TO PARTIES**

#### ***Plaintiffs***

9. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9.

10. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10.

11. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 11.

12. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12.

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13.

14. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14.

15. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 15.

*Defendants*

16. Defendant admits the allegations in paragraph 16.

**RESPONSE TO FACTUAL ALLEGATIONS**

17. Defendant denies the allegation in paragraph 17 that Plaintiffs are well-known professional models. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 17.

18. Defendant denies the allegations in paragraph 18.

19. Defendant denies the allegations in paragraph 19.

20. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20.

21. Defendant denies the allegations in paragraph 21.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22.

23. Defendant denies the allegations in paragraph 23.

24. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24.

25. Defendant denies the allegations in paragraph 25.

26. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 26.

27. Defendant denies the allegations in paragraph 27.

28. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28.

29. Defendant denies the allegations in paragraph 29.

30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30.

31. Defendant denies the allegations in paragraph 31.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 32.

33. Defendant denies the allegations in paragraph 33.

34. Defendant denies the allegations in paragraph 34.

35. Defendant denies the allegations in paragraph 35.

36. Defendant admits that none of the Plaintiffs consented to the alleged use of their images. Defendant denies the remaining allegations in paragraph 36.

37. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37.

38. Defendant denies the allegations in paragraph 38.

39. Defendant denies the allegations in paragraph 39.

40. Defendant admits that Plaintiffs did not receive remuneration from Defendants. Defendant denies the remaining allegations in paragraph 40.

41. Defendant denies the allegations in paragraph 41.

42. Defendant admits that none of the Plaintiffs have ever been employed at Chicas. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 42.

43. Defendant admits that none of the Plaintiffs have ever been hired to endorse Chicas and have received no remuneration from Defendant. Defendant denies the remaining allegations in paragraph 43.

44. Defendant denies the allegations in paragraph 44.

45. Defendant denies the allegations in paragraph 45.

***Response to Ownership of Images***

46. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 46.

47. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 47.

48. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 48.

***Response to Defendant's Business***

49. Defendant admits the allegations in paragraph 49.

50. Defendant admits the allegations in paragraph 50.

51. Defendant denies the allegations in paragraph 51.

52. Defendant denies the allegations in paragraph 52.

53. Defendant admits the allegations in paragraph 53.

54. Defendant denies that it misappropriated Plaintiffs' images. Defendant admits that it did not compensate Plaintiffs. Defendant denies all remaining allegations in paragraph 54.

55. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 55.

***Response to Standard Business Practices in the Modeling Industry***

56. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 56.

57. Defendant denies that it continued to post Plaintiffs' images depicted in Exhibits A-E. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 57.

***Response to Defendant's Misappropriation of Plaintiffs' Images***

58. Defendant denies the allegations in paragraph 58.

59. Defendant denies the allegations in paragraph 59.

60. Defendant denies the allegations in paragraph 60.

61. Defendant denies the allegations in paragraph 61.

62. Defendant denies the allegations in paragraph 62.

63. Defendant admits the allegations in paragraph 63.

64. Defendant denies the allegations in paragraph 64.

65. Defendant admits the allegations in paragraph 65.

66. Defendant denies the allegations in paragraph 66.

67. Defendant admits that it did not pay Plaintiffs. Defendant denies the remaining allegations in paragraph 67.

68. Defendant denies the allegations in paragraph 68.

69. Defendant denies the allegations in paragraph 69.

**RESPONSE TO FIRST CAUSE OF ACTION**  
**(Violation of § 43 of the Lanham Act, 15 U.S.C. § 1125, et seq.: False Endorsement)**

70. Defendant hereby repeats and asserts each admission and denial set forth in the preceding paragraphs as if fully set forth herein in response to paragraph 70.

71. Defendant denies the allegations in paragraph 71 to the extent it alleges that Defendant bears any liability to Plaintiffs under the Lanham Act.

72. Defendant denies the allegations in paragraph 72.

73. Defendant denies the allegations in paragraph 73

74. Defendant denies the allegations in paragraph 74.

75. Defendant denies the allegations in paragraph 75.

76. Defendant denies the allegations in paragraph 76.

77. Defendant denies the allegations in paragraph 77.

78. Defendant denies the allegations in paragraph 78.

**RESPONSE TO SECOND CAUSE OF ACTION**  
**(Violation of the Lanham Act, 15 U.S.C. § 1125(a): False Advertising)**

79. Defendant admits that paragraph 79 correctly recites 15 U.S.C. § 1125(a)(1)(B). Defendant denies the allegations in paragraph 79 to the extent it alleges that Defendant bears any liability to Plaintiffs under the Lanham Act.

80. Defendant denies the allegations in paragraph 80.

81. Defendant denies the allegations in paragraph 81.

82. Defendant denies the allegations in paragraph 82.

83. Defendant denies the allegations in paragraph 83.

84. Defendant denies the allegations in paragraph 84.

85. Defendant denies the allegations in paragraph 85.

86. Defendant admits that it promotes its business and events. Defendant denies the remaining allegations in paragraph 86.

87. Defendant denies the allegations in paragraph 87.

88. Defendant denies the allegations in paragraph 88.

89. Defendant denies the allegations in paragraph 89.

90. Defendant denies the allegations in paragraph 90.

91. Defendant denies the allegations in paragraph 91.

92. Defendant denies the allegations in paragraph 92.

93. Defendant denies the allegations in paragraph 93.

94. Defendant denies the allegations in paragraph 94.

95. Defendant denies the allegations in paragraph 95.

96. Defendant denies the allegations in paragraph 96.



**RESPONSE TO THIRD CAUSE OF ACTION**  
**(Violation of Texas Right to Privacy)**

97. Defendant hereby repeats and asserts each admission and denial set forth in the preceding paragraphs as if fully set forth herein in response to paragraph 97.

98. Defendant lacks knowledge or information sufficient to form a belief about the truth of whether Plaintiffs have reviewed the imagery in question. Defendant denies all the remaining allegations in paragraph 98.

99. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 99.

100. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 100.

101. Defendant denies the allegations in paragraph 101.

102. Defendant denies the allegations in paragraph 102.

103. Defendant denies the allegations in paragraph 103.

104. Defendant denies the allegations in paragraph 104.

105. Defendant admits that it did not receive permission or consent from Plaintiffs for the alleged use of their images. Defendant denies all remaining allegations in paragraph 105.

106. Defendant admits that it did not receive permission or consent from Plaintiffs for the alleged use of their images. Defendant denies all remaining allegations in paragraph 106.

107. Defendant admits that it did not compensate Plaintiffs. Defendant denies all remaining allegations in paragraph 107.

108. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 108.

109. Defendant denies the allegations in paragraph 109.

110. Defendant denies the allegations in paragraph 110.

111. Defendant denies the allegations in paragraph 111.

**RESPONSE TO FOURTH CAUSE OF ACTION**  
**(Defamation)**

112. Defendant hereby repeats and asserts each admission and denial set forth in the preceding paragraphs as if fully set forth herein in response to paragraph 112.

113. Defendant denies the allegations in paragraph 113.

114. Defendant denies the allegations in paragraph 114.

115. Defendant denies the allegations in paragraph 115.

116. Defendant denies the allegations in paragraph 116.

117. Defendant denies the allegations in paragraph 117.

118. Defendant denies the allegations in paragraph 118.

119. Defendant denies the allegations in paragraph 119.

120. Defendant denies the allegations in paragraph 120.

121. Defendant denies the allegations in paragraph 121.

122. Defendant denies the allegations in paragraph 122.

123. Defendant denies the allegations in paragraph 123.

124. Defendant denies the allegations in paragraph 124.

**RESPONSE TO FIFTH CAUSE OF ACTION**  
**(Negligence and *Respondeat Superior*)**

125. Defendant hereby repeats and asserts each admission and denial set forth in the preceding paragraphs as if fully set forth herein in response to paragraph 125.

126. Defendant denies the allegations in paragraph 126.

127. Defendant denies the allegations in paragraph 127.

128. Defendant denies the allegations in paragraph 128.

129. Defendant denies the allegations in paragraph 129.

130. Defendant denies the allegations in paragraph 130.

131. Defendant denies the allegations in paragraph 131.

132. Defendant denies the allegations in paragraph 132.

133. Defendant denies the allegations in paragraph 133.

134. Defendant denies the allegations in paragraph 134.

135. Defendant denies the allegations in paragraph 135.

**RESPONSE TO ATTORNEYS' FEES TEX. CIV. PRAC. & REM CODE § 38.001**

136. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 136.

137. Defendant denies the allegations in paragraph 137.

138. Defendant denies the allegations in paragraph 138.

**RESPONSE TO DEMAND FOR JURY TRIAL**

139. Defendant admits that Plaintiffs have demanded a jury trial.

**RESPONSE TO PRAYER FOR RELIEF**

140. Defendant denies that Plaintiffs are entitled to any of the relief specified under paragraphs (a)-(e).

**AFFIRMATIVE DEFENSES**

141. Defendant asserts and pleads that the applicable four-year statute of limitations applies as a bar to Plaintiffs' Lanham Act claims. *Jaso v. The Coca Cola Co.*, 435 Fed. Appx. 346, 356 (5th Cir. 2011) (collecting cases and citing Tex. Civ. Prac. & Rem. Code § 16.004).

142. Defendant asserts and pleads that the applicable two-year statute of limitations applies as a bar to Plaintiffs' claims for negligence and invasion of privacy. Tex. Civ. Prac. & Rem. Code § 16.003.

143. Defendant asserts and pleads that the applicable one-year statute of limitations applies as a bar to Plaintiffs' defamation claims. Tex. Civ. Prac. & Rem. Code § 16.002(a).

144. Defendant asserts and pleads the affirmative defense of laches, in that Plaintiffs unreasonably delayed in filing suit, they lack an excuse for the delay, and that Defendant suffered prejudice caused by that delay.

145. Defendant asserts and pleads the affirmative defense of mitigation of damages.

146. Defendant asserts and pleads that Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

### **CONCLUSION**

Defendant Chicas Entertainment, LLC, d/b/a Chicas Cabaret, requests that the Court enter judgment in its favor and grant it all further and necessary relief to which it may be justly entitled.

Respectfully submitted,

**WALLACE & ALLEN, LLP**

/s/ Casey T. Wallace

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document has been served on counsel of record in accordance with the Federal Rules of Civil Procedure via the Court's electronic filing system on March 24, 2022.

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